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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
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17 BMW OF NORTH AMERICA, LLC, a
18 Delaware Limited Liability Company,
19 and BAYERISCHE MOTOREN
WERKE AG, a German Corporation,

20 Plaintiffs,

21 v.

22 BAVARIAN AUTO PARTS d/b/a BAP
23 EUROPEAN, an unknown business
entity; BAVARIAN MOTOR PARTS,
24 an unknown business entity; OGANES
OGANESYAN, an Individual;
25 MOVSES MARTIROSYAN a/k/a
MIKE MARTIROSYAN, an Individual;
26 TIRAN MACHARYNA a/k/a TONY
MACHARYNA, an Individual;
27 HRIPSIME OGANESYAN, an
Individual; AIME OIKNINE, an
Individual; and DOES 1-10, inclusive,

28 Defendants.

Case No.: 2:16-cv-00448-DSF-JEM

**PROTECTIVE
ORDER FOR LITIGATION
INVOLVING HIGHLY
SENSITIVE CONFIDENTIAL
INFORMATION AND/OR
TRADE SECRETS**

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2 The Court, pursuant to the Stipulated Protective Order For Litigation

3 Involving Highly Sensitive Confidential Information and/or Trade Secrets,

4 between Plaintiffs BMW of North America, LLC and Bayerische Motoren Werke

5 AG (collectively “Plaintiffs”), on the one hand, and Defendants Bavarian Auto

6 Parts dba BAP European, Movses Martirosyan, Oganeg Oganegyan, Bavarian

7 Motor Parts, Tiran Macharyna aka Tony Macharyna, and Hripsime Oganegyan

8 (collectively “Defendants”), on the other, hereby ORDERS that a Protective Order

9 be issued in the above-referenced matter as follows:

10 1. A. PURPOSES AND LIMITATIONS

11 Disclosure and discovery activity in this action are likely to involve

12 production of confidential, proprietary, or private information for which special

13 protection from public disclosure and from use for any purpose other than

14 prosecuting this litigation may be warranted. Accordingly, the parties hereby

15 stipulate to and petition the court to enter the following Stipulated Protective

16 Order. The parties acknowledge that this Order does not confer blanket

17 protections on all disclosures or responses to discovery and that the protection it

18 affords from public disclosure and use extends only to the limited information or

19 items that are entitled to confidential treatment under the applicable legal

20 principles. The parties further acknowledge that this Stipulated Protective Order

21 does not entitle them to file confidential information under seal; Civil Local Rule

22 79-5 sets forth the procedures that must be followed and the standards that will be

23 applied when a party seeks permission from the court to file material under seal.

24 B. GOOD CAUSE FINDING

25 This action is likely to involve trade secrets, customer and pricing lists and

26 other valuable research, development, commercial, financial, technical and/or

27 proprietary information of which special protection from public disclosure and

28 from use for any purpose other than prosecution of this action is warranted. Such

1 confidential and proprietary materials and information consist of, among other
2 things, confidential business or financial information, information regarding
3 confidential business practices, or other confidential research, development, or
4 commercial information (including information implicating privacy rights of third
5 parties), information otherwise generally unavailable to the public, or which may
6 be privileged or otherwise protected from disclosure under state or federal
7 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
8 flow of information, to facilitate the prompt resolution of disputes over
9 confidentiality of discovery materials, to adequately protect information the
10 parties are entitled to keep confidential, to ensure the parties are permitted
11 reasonably necessary uses of such material in preparation for and in the conduct of
12 trial, to address their handling at the end of the litigation, and serve the ends of
13 justice, a protective order for such information is justified in this matter. It is the
14 intent of the parties that information will not be designated as confidential for
15 tactical reasons and that nothing be so designated without good faith belief that it
16 has been maintained in a confidential, non-public manner, and there is good cause
17 why it should not be part of the public record of this case.

18 **2. DEFINITIONS**

19 **2.1 Challenging Party:** a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 **2.2 “CONFIDENTIAL” Information or Items:** information (regardless of
22 how it is generated, stored or maintained) or tangible things that qualify for
23 protection under *Federal Rules of Civil Procedure* 26(c).

24 **2.3 Counsel (without qualifier):** Outside Counsel of Record and House
25 Counsel (as well as their support staff).

26 **2.4 Designating Party:** a Party or Non-Party that designates information
27 or items that it produces in disclosures or in responses to discovery as
28

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY.”

3 2.5 Disclosure or Discovery Material: all items or information, regardless
4 of the medium or manner in which it is generated, stored, or maintained
5 (including, among other things, testimony, transcripts, and tangible things), that
6 are produced or generated in disclosures or responses to discovery in this matter.

7 2.6 Expert: a person with specialized knowledge or experience in a
8 matter pertinent to the litigation who (1) has been retained by a Party or its
9 counsel to serve as an expert witness or as a consultant in this action, (2) is not a
10 past or current employee of a Party or of a Party’s competitor, and (3) at the time
11 of retention, is not anticipated to become an employee of a Party or of a Party’s
12 competitor.

13 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
14 Information or Items: extremely sensitive “Confidential Information or Items,”
15 disclosure of which to another Party or Non-Party would create a substantial risk
16 of serious harm that could not be avoided by less restrictive means.

17 2.8 House Counsel: attorneys who are employees of a party to this
18 action. House Counsel does not include Outside Counsel of Record or any other
19 outside counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association,
21 or other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a
23 party to this action but are retained to represent or advise a party to this action and
24 have appeared in this action on behalf of that party or are affiliated with a law firm
25 which has appeared on behalf of that party.

26 2.11 Party: any party to this action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and
28 their support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this action.

3 2.13 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits
5 or demonstrations, and organizing, storing, or retrieving data in any form or
6 medium) and their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY.”

10 2.15 Receiving Party: a Party that receives Disclosure or Discovery
11 Material from a Producing Party.

12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only
14 Protected Material (as defined above), but also (1) any information copied or
15 extracted from Protected Material; (2) all copies, excerpts, summaries, or
16 compilations of Protected Material; and (3) any testimony, conversations, or
17 presentations by Parties or their Counsel that might reveal Protected Material.
18 However, the protections conferred by this Stipulation and Order do not cover the
19 following information: (a) any information that is in the public domain at the time
20 of disclosure to a Receiving Party or becomes part of the public domain after its
21 disclosure to a Receiving Party as a result of publication not involving a violation
22 of this Order, including becoming part of the public record through trial or
23 otherwise; and (b) any information known to the Receiving Party prior to the
24 disclosure or obtained by the Receiving Party after the disclosure from a source
25 who obtained the information lawfully and under no obligation of confidentiality
26 to the Designating Party.

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1 Any use of Protected Material at trial shall be governed by a separate
2 agreement or order of the trial judge. This Order does not govern the use of
3 Protected Material at trial.

4 4. DURATION

5 Even after final disposition of this litigation, the confidentiality obligations
6 imposed by this Order shall remain in effect until a Designating Party agrees
7 otherwise in writing or a court order otherwise directs. Final disposition shall be
8 deemed to be the later of (1) dismissal of all claims and defenses in this action,
9 with or without prejudice; and (2) final judgment herein after the completion and
10 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
11 including the time limits for filing any motions or applications for extension of
12 time pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for
15 Protection. Each Party or Non-Party that designates information or items for
16 protection under this Order must take care to limit any such designation to specific
17 material that qualifies under the appropriate standards. To the extent it is practical
18 to do so, the Designating Party must designate for protection only those parts of
19 material, documents, items, or oral or written communications that qualify – so
20 that other portions of the material, documents, items, or communications for
21 which protection is not warranted are not swept unjustifiably within the ambit of
22 this Order.

23 Mass, indiscriminate, or routinized designations are prohibited.
24 Designations that are shown to be clearly unjustified or that have been made for
25 an improper purpose (e.g., to unnecessarily encumber or retard the case
26 development process or to impose unnecessary expenses and burdens on other
27 parties) expose the Designating Party to sanctions.

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1 If it comes to a Designating Party's attention that information or items that
2 it designated for protection do not qualify for protection at all or do not qualify for
3 the level of protection initially asserted, that Designating Party must promptly
4 notify all other parties that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided
6 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
7 stipulated or ordered, Disclosure or Discovery Material that qualifies for
8 protection under this Order must be clearly so designated before the material is
9 disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic
12 documents, but excluding transcripts of depositions or other pretrial or trial
13 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
14 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that
15 contains protected material. If only a portion or portions of the material on a page
16 qualifies for protection, the Producing Party also must clearly identify the
17 protected portion(s) (e.g., by making appropriate markings in the margins) and
18 must specify, for each portion, the level of protection being asserted.

19 A Party or Non-Party that makes original documents or materials
20 available for inspection need not designate them for protection until after the
21 inspecting Party has indicated which material it would like copied and produced.
22 During the inspection and before the designation, all of the material made
23 available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
24 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
25 documents it wants copied and produced, the Producing Party must determine
26 which documents, or portions thereof, qualify for protection under this Order.
27 Then, before producing the specified documents, the Producing Party must affix
28 the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY") to each page that contains Protected Material. If
2 only a portion or portions of the material on a page qualifies for protection, the
3 Producing Party also must clearly identify the protected portion(s) (e.g., by
4 making appropriate markings in the margins) and must specify, for each portion,
5 the level of protection being asserted.

6 (b) for testimony given in deposition or in other pretrial or trial
7 proceedings, that the Designating Party identify on the record, before the close of
8 the deposition, hearing, or other proceeding, all protected testimony and specify
9 the level of protection being asserted. When it is impractical to identify separately
10 each portion of testimony that is entitled to protection and it appears that
11 substantial portions of the testimony may qualify for protection, the Designating
12 Party may invoke on the record (before the deposition, hearing, or other
13 proceeding is concluded) a right to have up to 21 days to identify the specific
14 portions of the testimony as to which protection is sought and to specify the level
15 of protection being asserted. Only those portions of the testimony that are
16 appropriately designated for protection within the 21 days shall be covered by the
17 provisions of this Stipulated Protective Order. Alternatively, a Designating Party
18 may specify, at the deposition or up to 21 days afterwards if that period is properly
19 invoked, that the entire transcript shall be treated as "CONFIDENTIAL" or
20 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

21 Parties shall give the other parties notice if they reasonably expect a
22 deposition, hearing or other proceeding to include Protected Material so that the
23 other parties can ensure that only authorized individuals who have signed the
24 "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those
25 proceedings. The use of a document as an exhibit at a deposition shall not in any
26 way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
27 – ATTORNEYS' EYES ONLY."

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Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption

1 or delay of the litigation, a Party does not waive its right to challenge a
2 confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
5 resolution process by providing written notice of each designation it is challenging
6 and describing the basis for each challenge. To avoid ambiguity as to whether a
7 challenge has been made, the written notice must recite that the challenge to
8 confidentiality is being made in accordance with this specific paragraph of the
9 Protective Order. The parties shall attempt to resolve each challenge in good faith
10 and must begin the process by conferring directly (in voice to voice dialogue;
11 other forms of communication are not sufficient) within 14 days of the date of
12 service of notice. In conferring, the Challenging Party must explain the basis for
13 its belief that the confidentiality designation was not proper and must give the
14 Designating Party an opportunity to review the designated material, to reconsider
15 the circumstances, and, if no change in designation is offered, to explain the basis
16 for the chosen designation. A Challenging Party may proceed to the next stage of
17 the challenge process only if it has engaged in this meet and confer process first or
18 establishes that the Designating Party is unwilling to participate in the meet and
19 confer process in a timely manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
21 without court intervention, the Designating Party shall file and serve a motion to
22 retain confidentiality under Civil Local Rule 7 (and in compliance with Civil
23 Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
24 within 14 days of the parties agreeing that the meet and confer process will not
25 resolve their dispute, whichever is earlier. Each such motion must be
26 accompanied by a competent declaration affirming that the movant has complied
27 with the meet and confer requirements imposed in the preceding paragraph.
28 Failure by the Designating Party to make such a motion including the required

1 declaration within 21 days (or 14 days, if applicable) shall automatically waive the
2 confidentiality designation for each challenged designation. In addition, the
3 Challenging Party may file a motion challenging a confidentiality designation at
4 any time if there is good cause for doing so, including a challenge to the
5 designation of a deposition transcript or any portions thereof. Any motion
6 brought pursuant to this provision must be accompanied by a competent
7 declaration affirming that the movant has complied with the meet and confer
8 requirements imposed by the preceding paragraph.

9 The burden of persuasion in any such challenge proceeding shall be on the
10 Designating Party. Frivolous challenges and those made for an improper purpose
11 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
12 expose the Challenging Party to sanctions. Unless the Designating Party has
13 waived the confidentiality designation by failing to file a motion to retain
14 confidentiality as described above, all parties shall continue to afford the material
15 in question the level of protection to which it is entitled under the Producing
16 Party's designation until the court rules on the challenge.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that
19 is disclosed or produced by another Party or by a Non-Party in connection with
20 this case only for prosecuting, defending, or attempting to settle this litigation.
21 Such Protected Material may be disclosed only to the categories of persons and
22 under the conditions described in this Order. When the litigation has been
23 terminated, a Receiving Party must comply with the provisions of Section 13
24 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.

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1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as
6 well as employees of said Outside Counsel of Record to whom it is reasonably
7 necessary to disclose the information for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
9 A;

10 (b) the officers, directors, and employees (including House Counsel)
11 of the Receiving Party to whom disclosure is reasonably necessary for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be
13 Bound” (Exhibit A);

14 (c) Experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation and who have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial
19 consultants, and Professional Vendors to whom disclosure is reasonably necessary
20 for this litigation and who have signed the “Acknowledgment and Agreement to
21 Be Bound” (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom
23 disclosure is reasonably necessary and who have signed the “Acknowledgment
24 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
25 Designating Party or ordered by the court. Pages of transcribed deposition
26 testimony or exhibits to depositions that reveal Protected Material must be
27 separately bound by the court reporter and may not be disclosed to anyone except
28 as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in

1 this Order) any information or item that has been designated “HIGHLY
 2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)
 3 first must make a written request to the Designating Party that (1) identifies the
 4 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 5 ONLY” information that the Receiving Party seeks permission to disclose to the
 6 Expert, (2) sets forth the full name of the Expert and the city and state of his or her
 7 primary residence, (3) attaches a copy of the Expert’s current resume, (4)
 8 identifies the Expert’s current employer(s),¹ (5) identifies each person or entity
 9 from whom the Expert has received compensation or funding for work in his or
 10 her areas of expertise or to whom the expert has provided professional services,
 11 including in connection with a litigation, at any time during the preceding five
 12 years,² and (6) identifies (by name and number of the case, filing date, and
 13 location of court) any litigation in connection with which the Expert has offered
 14 expert testimony, including through a declaration, report, or testimony at a
 15 deposition or trial, during the preceding five years.

16 (b) A Party that makes a request and provides the information
 17 specified in the preceding respective paragraphs may disclose the subject
 18 Protected Material to the identified Expert unless, within 14 days of delivering the
 19 request, the Party receives a written objection from the Designating Party. Any
 20 such objection must set forth in detail the grounds on which it is based.

21 (c) A Party that receives a timely written objection must meet and
 22 confer with the Designating Party (through direct voice to voice dialogue) to try to
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24 _____
 25 ¹ The Expert shall be restricted from undertaking work prior to the termination of the litigation
 26 that could foreseeably result in an improper use of the Designating Party’s “HIGHLY
 27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

28 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-
 party, then the Expert should provide whatever information the Expert believes can be disclosed
 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
 shall be available to meet and confer with the Designating Party regarding any such engagement.

1 resolve the matter by agreement within seven days of the written objection. If no
 2 agreement is reached, the Party seeking to make the disclosure to the Expert may
 3 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil
 4 Local Rule 79-5, if applicable) seeking permission from the court to do so. Any
 5 such motion must describe the circumstances with specificity, set forth in detail
 6 the reasons why the disclosure to the Expert is reasonably necessary, assess the
 7 risk of harm that the disclosure would entail, and suggest any additional means
 8 that could be used to reduce that risk. In addition, any such motion must be
 9 accompanied by a competent declaration describing the parties' efforts to resolve
 10 the matter by agreement (i.e., the extent and the content of the meet and confer
 11 discussions) and setting forth the reasons advanced by the Designating Party for
 12 its refusal to approve the disclosure.

13 In any such proceeding, the Party opposing disclosure to the Expert shall
 14 bear the burden of proving that the risk of harm that the disclosure would entail
 15 (under the safeguards proposed) outweighs the Receiving Party's need to disclose
 16 the Protected Material to its Expert.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 18 IN OTHER LITIGATION

19 8.1 Notice of Civil Subpoena or Court Order. If a Party is served with a
 20 civil subpoena or a court order issued in other litigation that compels disclosure of
 21 any information or items designated in this action as "CONFIDENTIAL" or
 22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

23 (a) promptly notify in writing the Designating Party. Such
 24 notification shall include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or
 26 order to issue in the other litigation that some or all of the material covered by the
 27 subpoena or order is subject to this Protective Order. Such notification shall
 28 include a copy of this Stipulated Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be affected.³

3 8.2 Compliance with Civil Subpoena or Court Order. If the Designating
4 Party timely seeks a protective order, the Party served with the civil subpoena or
5 court order shall not produce any information designated in this action as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” before a determination by the court from which the subpoena or order
8 issued, unless the Party has obtained the Designating Party’s permission. The
9 Designating Party shall bear the burden and expense of seeking protection in that
10 court of its confidential material – and nothing in these provisions should be
11 construed as authorizing or encouraging a Receiving Party in this action to
12 disobey a lawful directive from another court.

13 8.3 Compliance with Law Enforcement or Grand Jury Subpoena. The
14 Parties acknowledge that, as a matter of law or as a function of any criminal or
15 law enforcement investigations, they may be prevented from giving any notice
16 whatsoever relating to the disclosure of information marked as
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY.” Nothing herein shall require a Party to give notice where otherwise
19 prohibited by law or criminal enforcement. In these circumstances, the Party may
20 produce information marked as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” without violating the terms of
22 this Stipulated Protective Order.

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28 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 9.1 Application. The terms of this Order are applicable to information
4 produced by a Non-Party in this action and designated as "CONFIDENTIAL" or
5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information
6 produced by Non-Parties in connection with this litigation is protected by the
7 remedies and relief provided by this Order. Nothing in these provisions should be
8 construed as prohibiting a Non-Party from seeking additional protections.

9 9.2 Production of Non-Party Confidential Information. In the event that
10 a Party is required, by a valid discovery request, to produce a Non-Party's
11 confidential information in its possession, and the Party is subject to an agreement
12 with the Non-Party not to produce the Non-Party's confidential information, then
13 the Party shall:

14 (a) promptly notify in writing the Requesting Party and the Non-
15 Party that some or all of the information requested is subject to a confidentiality
16 agreement with a Non-Party;

17 (b) promptly provide the Non-Party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a
19 reasonably specific description of the information requested; and

20 (c) make the information requested available for inspection by the
21 Non-Party.

22 9.3 Failure to Object. If the Non-Party fails to object or seek a protective
23 order from this court within 14 days of receiving the notice and accompanying
24 information, the Receiving Party may produce the Non-Party's confidential
25 information responsive to the discovery request. If the Non-Party timely seeks a
26 protective order, the Receiving Party shall not produce any information in its
27 possession or control that is subject to the confidentiality agreement with the Non-
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1 Party before a determination by the court.⁴ Absent a court order to the contrary,
 2 the Non-Party shall bear the burden and expense of seeking protection in this
 3 court of its Protected Material.

4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
 6 disclosed Protected Material to any person or in any circumstance not authorized
 7 under this Stipulated Protective Order, the Receiving Party must immediately (a)
 8 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
 9 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
 10 inform the person or persons to whom unauthorized disclosures were made of all
 11 the terms of this Order, and (d) request such person or persons to execute the
 12 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
 13 A.

14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
 17 inadvertently produced material is subject to a claim of privilege or other
 18 protection, the obligations of the Receiving Parties are those set forth in *Federal*
 19 *Rules of Civil Procedure* 26(b)(5)(B). This provision is not intended to modify
 20 whatever procedure may be established in an e-discovery order that provides for
 21 production without prior privilege review. Pursuant to *Federal Rules of Evidence*
 22 502(d) and (e), insofar as the parties reach an agreement on the effect of
 23 disclosure of a communication or information covered by the attorney-client
 24 privilege or work product protection, the parties may incorporate their agreement
 25 in the stipulated protective order submitted to the court.

26
 27
 28 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of
3 any person to seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in
7 this Stipulated Protective Order. Similarly, no Party waives any right to object on
8 any ground to use in evidence of any of the material covered by this Protective
9 Order.

10 12.3 Filing Protected Material. Without written permission from the
11 Designating Party or a court order secured after appropriate notice to all interested
12 persons, a Party may not file in the public record in this action any Protected
13 Material. A Party that seeks to file under seal any Protected Material must
14 comply with Civil Local Rule 79-5. Protected Material may only be filed under
15 seal pursuant to a court order authorizing the sealing of the specific Protected
16 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
17 only upon a request establishing that the Protected Material at issue is privileged,
18 protectable as a trade secret, or otherwise entitled to protection under the law. If a
19 Receiving Party's request to file Protected Material under seal pursuant to Civil
20 Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the
21 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
22 unless otherwise instructed by the court.

23 13. FINAL DISPOSITION

24 13.1 Return or Destruction of Protected Material. Within 60 days after the
25 final disposition of this action, as defined in Section 4, each Receiving Party must
26 return all Protected Material to the Producing Party or destroy such material. As
27 used in this subdivision, "all Protected Material" includes all copies, abstracts,
28 compilations, summaries, and any other format reproducing or capturing any of

1 the Protected Material. Whether the Protected Material is returned or destroyed,
 2 the Receiving Party must submit a written certification to the Producing Party
 3 (and, if not the same person or entity, to the Designating Party) by the 60-day
 4 deadline that (1) identifies (by category, where appropriate) all the Protected
 5 Material that was returned or destroyed and (2) affirms that the Receiving Party
 6 has not retained any copies, abstracts, compilations, summaries or any other
 7 format reproducing or capturing any of the Protected Material.

8 13.2 Exception for Archival Copies. Notwithstanding Section 13.1,
 9 Counsel are entitled to retain an archival copy of all pleadings, motion papers,
 10 trial, deposition, and hearing transcripts, legal memoranda, correspondence,
 11 deposition and trial exhibits, expert reports, attorney work product, and consultant
 12 and expert work product, even if such materials contain Protected Material. Any
 13 such archival copies that contain or constitute Protected Material remain subject to
 14 this Protective Order as set forth in Section 4 (DURATION).

15 13.3 Exception for Pending Matters. Notwithstanding Section 13.1,
 16 Counsel may retain copies of any and all documents, specifically including but not
 17 limited to purchase orders, invoices or other documents that may implicate any
 18 individual(s) or entity(ies) that are the subject of or involved in any way with any
 19 pending litigation or investigation that could potentially result in litigation,
 20 regardless of whether these documents contain Protected Material. Any
 21 documents subject to this provision shall remain subject to this Protective Order as
 22 set forth in Section 4 (DURATION).

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24
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 26 DATED: 10/04/2016

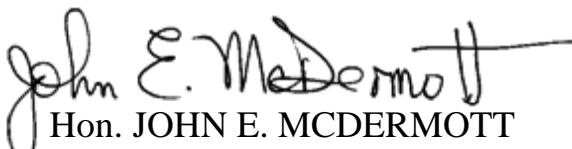

 Hon. JOHN E. MCDERMOTT
 United States Magistrate Judge
 Central District of California

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of ***BMW of North America, LLC, et al. v. Bavarian Auto Parts, et al., CACD Case No. 2:16-cv-DSF-JEM***. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

[CONTINUED ON NEXT PAGE]

Initials: _____

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1 I hereby appoint _____ [print or type full
2 name] _____ of

3 _____
4 _____
5 [print or type full address and telephone number] as my California agent for
6 service of process in connection with this action or any proceedings related to
7 enforcement of this Stipulated Protective Order.

8
9 Date: _____

10 City and State where sworn and signed: _____

11
12 Printed name: _____

13 Signature: _____
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